IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 18925 of 1999(C)

PETITIONER:

PREMIER BREWERIES LTD.,
KANJIKODE WEST -678 623.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR
SMT.PRIYA MAHESH

RESPONDENTS:

1. SECRETARY TO GOVERNMENT OF KERALA (TAXES),
THIRUVANANTHAPURAM.

2. ASSISTANT COMMISSIONER, (ASSMT.),
COMMERCIAL TAX, SALES TAX COMPLEX, PALAKKAD.

BY GOVERNMENT PLEADER SRI T.C.K. CHAND

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.31050/99 IN OP.18925/99

Dismissed

22/11/2007 Sd/- P.R.RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF FORM NO.9.

EXT.P2 TRUE COPY OF FORM NO.8.

EXT.P3 TRUE COPY OF ASSESSMENT ORDER DTD. 28/12/96 FOR THE ASSESSMENT YEAR 1988-89.

EXT.P4 TRUE COPY OF THE ASSESSMENT ORDER DTD.28/12/96 FOR THE ASSESSMENT YEAR 1989-90.

EXT.P5 TRUE COPY OF THE ASSESSMENT ORDER DTD. 31/12/1996 FOR THE ASSESSMENT YEAR 1990-91.

EXT.P6 TRUE COPY OF THE NOTICE OF DEMAND DTD.7/7/99 FOR THE ASSESSMENT YEAR 1988-89.

EXT.P7 TRUE COPY OF THE NOTICE OF DEMAND DTD. 7/7/99 FOR THE ASSESSMENT YEAR 1989-90.

EXT.P8 TRUE COPY OF THE NOTICE OF DEMAND DTD.7/7/99 FOR THE ASSESSMENT YEAR 1990-91.

P.R.RAMAN, J.

O.P.No.18925 OF 1999

Dated this the 22nd day of November, 2007

JUDGMENT

Petitioner is an assessee under the Kerala General Sales Tax Act. He is engaged in manufature and sale of beer. The dispute relates to the liablity of the petitioner to pay penal interest under Section 23(3) of the Kerala General Sales Tax Act. Penal interest was demanded pursuant to the completion of the assessments for the years 1988-89, 1989-90 and 1990-91 as per Exts.P3, P4 and P5. Petitioner paid the tax due thereunder. But the Sales Tax Authorities by Exts.P6, P7 and P8 issued notice of demand of interest under Section 23(3) of the Act on the reasoning that the tax has become due even prior to the assessment orders. Petitioner is assessed only for the turnover tax and hence the question of collecting any tax from the petitioner does not arise. Petitioner submitted Form 9 return under the assumption that he has no liability to pay turnover tax. Subsequently, the petitioner submitted Form 8 also. It was thereafter that the assessments were completed. In such circumstances, whether there is any liability to pay penal interest under Section 23(3) of the Act arises for consideration.

2. Subsequent to the filing of the original petition a counter affidavit was filed in 1999 denying the contentions of the petitioner. Reliance is also placed in the decision reported in 1986 STC 259, 1996 K.L.J. (Tax Cases) 327 and 1988 K.L.J. (Tax Cases) 487. The question regarding liability to pay penal interest under Section 23(3) of the Act directly arose for consideration before the Apex Court in Maruthi Wire Industries Pvt.Ltd. v. Sales Tax Officer, First Circle, Mattancherry and others ((2001) 122 STC 410). The Apex Court reversed the decision of this Court reported in Sales Tax Officer v. Maruthi Wire Industries Pvt.Ltd. ((1999) 113 STC 19). The Apex Court restored the decision of the Single Bench, who quashed the payment of penal interest under Section 23(3) after referring to the provisions contained in the Act. It was held that a legislative casus omissus cannot be supplied by judicial interpretative process and the liability to pay sales tax can arise either by way of self-assessment on the return of turnover being filed, or else on an order of assessment being made. A Failure to file the return of taxable turnover may render the dealer liable for any other consequences or penal action as provided by law but cannot attract the liability of penal interest under Section 23(3) of the Act. The present case is squarely covered by

the above decision of the Apex Court. Accordingly, Exts.P6, P7 and P8 notices of demand are quashed.

Original Petition is allowed.

P.R.RAMAN,
Judge.

kcv.